



Tonawanda Community Fund

An affiliate of "The Wellness Institute of Greater Buffalo"

Hon. William Skretny
Chief United States District Judge for the Western District of New York
2 Niagara Square
Buffalo, N.Y. 14202
August 2, 2013

Dear Honorable Skretny,

I am pleased to submit two community service project ideas for your review and consideration when sentencing the defendants in the Tonawanda Coke Corp v United States of America lawsuit and verdict. I am grateful for the opportunity to submit these ideas and appreciate any feedback from you and the Department of Justice, as I am truly committed, along with my project collaborators, to seeing each of these projects funded and come to fruition. I have also included a copy of my impact statement because both project ideas were conceptualized from my personal experiences and working as a community activist/citizen scientist for the last ten years.

The first project idea with an estimated budget of approximately \$700,000 and entitled "Determining the Environmental Impact of Coke Oven Emissions Originating from Tonawanda Coke Corp." was written as a result of the citizen science work a few of my neighbors and I started last year. We decided to test our soil after learning that a similar community's soil in N. Birmingham, Al, where two foundry coke plants reside, was contaminated with dangerous chemicals. We found the same dangerous chemicals in the Tonawanda neighborhood we tested. Additionally, we have continued our efforts in other impacted neighborhoods to some extent this summer, but are unable to complete a comprehensive investigation due to lack of funding.

The second project idea entitled "Niagara Riverfront Community Wellness and Resource Center" and "Cherry Farm Project" with an estimated budget of \$7.8 million, was also submitted to you by the Town of Tonawanda, but as two separate projects. . The purpose as to why I am submitting these ideas together and in greater detail is to provide you with a vision of how a few of the proposed project ideas "fit" together. Also note, with the later project idea, I have incorporated the first project into the "citizen science" section.

I decided not to pursue letters of support for these ideas from elected official's as I was not sure if it appropriate and necessary. I am hoping that whatever decisions you make are not swayed by politics and that my sincere efforts, track record, as well as the phenomenal reputation of the collaborators on these projects will speak for themselves.

Lastly, and once again, I want to acknowledge the collaborators I was so fortunate to work with in crafting these project proposals. Even though I conceptualized both ideas, the top-notch reputation of each collaborator and commitment in our shared vision is what made these project ideas possible.

Please feel free to contact me, if you have any questions.

Sincerely,


Jackie James Creedon
Tonawanda Community Fund
716-873-6191

Niagara Riverfront Community Wellness and Resource Center

A Cherry Farm Project

Description:

- The Wellness and Resource Center will serve impacted people, employers and visitors of the Town and City of Tonawanda, Eastern Grand Island, North Buffalo, and Kenmore by creating a healthier and more sustainable community. Operation of the Center will be year round, and create community social capital and restore the positive and healthy branding of the impacted riverfront communities as excellent places to live, work and play.
- There are many potential facility locations; however, this project idea includes the redevelopment of a 55-acre site along the Niagara River located in the Town of Tonawanda into a passive waterfront park (see Town of Tonawanda's Cherry Farm Park Project Idea and appendix A).
- This project idea was created in collaboration between The Wellness Institute of Buffalo (non for profit), The Town of Tonawanda (municipality), and Tonawanda Community Fund (community group).

Goals:

To serve impacted people in the communities surrounding Tonawanda Coke Corp. and create a healthier community by providing:

- **Wellness and Resource Center:** (see appendix B)
 - **Wellness Services:**
 - Counseling (individual and group)
 - Occupational and physical therapy
 - Health clinic
 - Classes and services such as yoga, tai chi, massage, etc.
 - **Community Resources:**
 - Areas to congregate and meet
 - Educational services and classes in environmental awareness and activism, nutrition, alternative energy, sustainability
 - Job training
 - Banquet center
 - Office and meeting spaces
 - Library and/or bookstore.
 - **Community Engagement and Healing Resources:**
 - A citizen science center offering a historical perspective on how the impacted community was overburdened by industrial pollution and affected change. The Center will also offer resources for current and future community air, soil and water testing strategies and projects.
 - A meditation and remembrance garden in commemoration for those impacted.
 - Community meeting space with a coffee and tea shop with a porch/patio to congregate and talk.

- **Public Park (Cherry Farm):**
 - Walking/biking trails, gardens, picnic areas
 - Outdoor activities, river front activities.
- **Other Benefits:**
 - Economic Opportunities: job creation, investment, property value stabilization and improved economy by the waterfront and in the Town of Tonawanda and the adjoining communities.
 - Create Sustainability and Social Capital

Timeline:

- Solicit Community Input and Hold Meeting
 - Jan.-March 2014
- Complete Concept Ideas and Community Vote
 - April-June 2014
- Facility Construction and Completion
 - June- Spring 2015
- Facility Opening
 - Summer 2015

Roles and Responsibilities:

Town of Tonawanda: Owner and Manager of Building
 The Wellness Center and Tonawanda Community Fund: Service and Program Managers
 Citizen Advisory Group (TBD): Program and Services

Estimated Costs (See Appendix C for budget details):

Wellness and Resource Center	\$5,500,000
<u>Cherry Farm Park</u>	<u>\$2,300,000</u>
Total	\$7,800,000

Appendix A

Niagara Riverfront Community Wellness and Resource Center

Town of Tonawanda, NY

A Cherry Farm Project



Appendix B:

Program and Service Potential Ideas

Community Advisory Group will vote by consensus and determine final list.

FOR RESIDENTS/EMPLOYERS: impacted

- Physical Activity Space/Yoga/Tai Chi
- Mental & Emotional Health
- Financial Counseling
- Spaces to relax
- Health Clinic: chiropractic, nutrition services, medical residents, preventative medicine
- Community Garden
- Rose Garden: can buy rose/plaque in remembrance; benches
- Boating/ Fishing
- Community Meeting
- Job Training
- Art Therapy
- Transportation: Bikes, vans, bus line
- Community Events: Wellness
- Memorial Gardens: History
- Employee Wellness: support to employers
- Retail Space: book store and coffee shop

FOR VISITORS

- Tourist Destination
- Restrooms
- Showers
- Powder Room
- Bike Rentals
- Farmers Market
- Parking
- Boating Docks
- Parking
- Camping Space
- Bike Racks
- Dog Facilities
- Picnic Tables

Appendix C

Detailed Budget

Wellness and Resource Center

- Main Building

- Cost. The projected cost for construction and facility services is **\$4 million**.
- Offsets. The nature and scope of the project (i.e. – ‘bricks-and-mortar’) lends itself to grants and sponsorships from several public and private sources, including major corporations, foundations and individuals.

- Programs and Services

- Cost. It is recommended that funding for a three-year start-up period be provided in the amount of **\$1.5 million**, based on the following annual costs:
 - Staffing /benefits (6-8 full time employees) \$ 250,000
 - Other Overhead \$ 225,000
 - Insurance
 - Marketing/promotions/communications/website/social media
 - Maintenance repairs
 - Programs
 - Professional services
- Offsets. The nature and scope of the programs and services lends itself to the generation of revenues (e.g. – rentals, concession fees, and advertising), as well as charitable donations.

Total Estimated Budget: \$5.5 million

Cherry Farm Park

- Phase I – Basic Site Access
 - Based on prior discussions with property owners, it is anticipated that the land will be donated, alleviating any significant costs for acquisition.
 - The Town and PRPs are currently discussing options to reduce the cost of pre-treating ground-water collected on-site (currently about \$100,000 per year).

Appendix C
Detailed Budget
Cherry Farm Park

- A series of physical improvements are required to get 'basic' site access (costs do not include engineering, contingencies or administrative):

○ Roadway (24' width)	\$ 498,000
○ Biolswales	\$ 250,000
○ Bike Path, Bike racks	\$ 102,000
○ Parking lots	\$ 80,000
○ Tables, benches, trash recep.	\$ 50,000
○ <u>Signage, gate, benches</u>	<u>\$ 20,000</u>

Projection \$ 1,000,000

- **Phase II – Park Enhancements**

- Phase II includes a series of physical improvements that will extend the scope of site amenities (costs do not include engineering, contingencies or administrative):

○ Utilities	\$ 840,000
○ Earthwork	\$ 465,000
○ Landscaping, seeding	\$ 380,000
○ Site Concrete	\$ 120,000
○ Lighting	\$ 150,000
○ Pavilions	\$ 159,000
○ Walkways	\$ 153,000
○ <u>Nature Trail</u>	<u>\$ 30,000</u>

Projection \$ 2,297,000

Total Estimated Budget: \$2.3 million

Grand Total: Wellness, Resource Center and Cherry Farm Park: \$7.8 million

UNITED STATES v. TONAWANDA COKE CORPORATION
10-CR-219

Model Environmental Compliance Program (“ECP”)

I. DEFINITIONS

1. The terms below are defined as follows for the purposes of this Attachment:

(a) “Action Plan” shall mean a comprehensive plan for bringing the Facility, as defined below, into full conformance with the ECP provisions specified in Paragraph 28 of this Attachment and fully addressing all Audit Findings identified in the Audit Report.

(b) “Audit Finding” shall mean a written summary of all instances of nonconformance with the provisions of Paragraph 28 of this Attachment noted during the ECP audit, and all areas of concern identified during the course of the audit that, in the ECP Auditor’s judgment, merits further review or evaluation for potential ECP, environmental, or regulatory impacts.

(c) “Audit Report” shall mean a report setting forth the Audit Findings resulting from the audit of the Facility by the ECP Auditor, which includes all the requirements set forth in Paragraph 28 of this Attachment.

(d) “Comprehensive Environmental Compliance Training Program” or “CECTP” shall mean a training program designed to ensure that all Facility employees and those acting on behalf of the Facility that are either responsible for or have an impact on the Facility’s environmental compliance are trained to be knowledgeable regarding the Environmental Requirements as defined below applicable to the Facility consistent with Section II below.

(e) “Corrective Measures” shall mean those measures or actions appropriate to bring the Facility into full conformance with the ECP provisions of Paragraph 9 of this Attachment.

(f) “ECP Auditor” shall mean an independent third-party, hired by the Defendant and approved by the United States to monitor Defendant’s development and implementation of the ECP and to conduct ECP Audits at the Facility.

(g) “ECP Consultant(s)” shall mean individual(s) meeting the requirements of Paragraph 2 below, who are selected and/or contracted to perform the Initial ECP Review and Evaluation and/or assist the Defendant in developing and implementing the ECP required by this Attachment.

(h) “Environmental Requirements” shall mean all applicable federal, state, and local environmental statutes and regulations, including permits, compliance orders, and enforceable agreements between the Defendant and the respective environmental regulatory agencies. This specifically includes, but is not limited to, the federal Clean Water, Clean Air, Emergency Planning and Community Right-to-Know, and Resource Conservation and Recovery Acts.

(i) “Facility” or “Defendant’s Facility” shall mean the Tonawanda Coke Corporation facility located at 3875 River Road, Tonawanda, New York 14151-5007.

(j) “Defendant” shall mean the Tonawanda Coke Corporation.

(k) “United States Probation Office” shall mean the United States Probation Office for the Western District of New York, located at 2 Niagara Square, Buffalo, NY 14202.

(l) “United States” shall mean the United States Attorney’s Office for the Western District of New York, located at 138 Delaware Avenue, Buffalo, NY 14202.

(m) “EPA” shall mean the United States Environmental Protection Agency, Region 2, Division Director, Division of Enforcement and Compliance Assurance, 290 Broadway, 21st Floor, New York, NY 10007.

(n) “New York State” shall mean the New York State Department of Environmental

Conservation, Region 9, Regional Director, 270 Michigan Avenue, Buffalo, NY 14203.

II. COMPREHENSIVE ENVIRONMENTAL COMPLIANCE PROGRAM

A. Initial Review

2. Within **thirty (30) days** following the Court issuing sentence, the Defendant shall provide to the United States Probation Office and to the United States, in writing, a notification with information concerning the person(s) or organization(s) identified by the Defendant as the “Proposed Consultant” to perform an evaluation (commonly called a “gap analysis”) of any environmental management practices, and environmental training existing at the Facility (the “Initial Review and Evaluation”) as well as assist the Defendant with the development of a training program. The written notification submitted by the Defendant pursuant to this Paragraph shall also identify the schedule, including milestones, for conducting the Initial Review and Evaluation. The notification shall, at a minimum, include: 1) the name, affiliation, and address of the Proposed Consultant; 2) information demonstrating how each Proposed Consultant satisfies the auditor qualification requirements of Table 1 in ISO 19011 (First edition, 2002-10-01) and has experience in developing and implementing an environmental training program; 3) information demonstrating that the Proposed Consultant conducting the Initial Review and Evaluation, in composite, has an understanding of the coke making process and Environmental Requirements which apply to the Facility; and 4) evidence that the Proposed Consultant(s) have at least a bachelor’s degree from an accredited institution. For a Proposed Consultant to have an understanding of the coke making process, s/he does not have to have prior work experience specific to the coke industry, but should have industrial process and regulatory compliance experience.

3. The United States Probation Office and the United States will notify the Defendant within **thirty (30) days** of obtaining the written notification from the Defendant whether the

Proposed Consultant is qualified to perform the Initial Review and Evaluation relative to the standards set forth in the previous Paragraph. If any Proposed Consultant is disapproved, then the Defendant shall identify a different Proposed Consultant within **thirty (30) days** of the Defendant's receipt of the United States' determination. Both the Defendant's initial proposal, and the United States Probation Office and United States' review of any different Proposed Consultant will be in accordance with Paragraphs 2 and 3 of this Attachment until such time as the United States Probation Department and the United States notifies the Defendant that the Proposed Consultant is accepted and qualified to conduct the Initial Review and Evaluation.

B. Initial Review and Evaluation

4. Upon notification that the Proposed Consultant is accepted, the Proposed Consultant will become the "Consultant" and must complete an initial review and evaluation of any training programs at the Facility within **thirty (30) days** of being accepted.

5. Upon completion of the initial review and evaluation, the Consultant will have an additional **thirty (30) days** to complete a written summary report ("Summary Report") of any existing training programs at the Facility. The Summary Report shall be provided to the United States Probation Office and the United States.

6. During the initial review and evaluation, the Facility must fully cooperate with the Consultant, and allow the Consultant full access to all records relevant to the analysis of any existing training programs. The Consultant shall report any lack of cooperation or lack of access to the United States Probation Office and the United States.

7. The initial review and evaluation, shall, at the minimum, include: 1) an understanding of current training programs in place at the Facility; 2) a survey of current employees as to the amount of training received; 3) an understanding of hiring trends at the

Facility; and 4) an understanding of past violations of federal, state and local statutes and regulations at the facility.

C. Comprehensive ECP Development and Implementation

8. Based on the Initial ECP Review and Evaluation results and other information, the Defendant, assisted by the ECP Consultant(s), shall develop, implement, and maintain a Comprehensive ECP for the Facility addressing, at a minimum, the critical elements presented in Paragraph 9, below. The purpose of developing the Comprehensive ECP is to assist the Defendant in complying with Environmental Requirements, as well as to improve environmental performance.

9. ECP Manual. Within **four (4) months** of the date that the United States notified the Defendant that the ECP Consultant is qualified to assist in development of a Comprehensive ECP, the Defendant shall submit to the United States for review and approval, an “Environmental Compliance System Manual” which describes and documents the Comprehensive ECP and contains an ECP implementation schedule for each of the described systems and subsystems not fully implemented. The United States Probation Office and the United States will notify the Defendant within **thirty (30) days** of obtaining the Environmental Compliance System Manual from the Defendant whether it is accepted. If the Environmental Compliance System Manual is not accepted by the United States Probation Office and/or the United States, the United States Probation Office and/or the United States will inform the Defendant as to the reasons why the manual is unacceptable, and the Defendant shall then have **thirty (30) days** to resubmit the manual for acceptance. The Environmental Compliance System Manual shall describe or contain, as appropriate, overarching policies, procedures, and programs that fully compose the facility-wide ECP framework, and respective management systems, subsystems, and tasks for the following

critical elements:

(a) Environmental Policy. This policy, upon which the ECP is based, must clearly communicate management commitment to achieving compliance with Environmental Requirements; minimizing risks to the environment from unplanned or unauthorized releases of hazardous or harmful contaminants, including benzene and particulate matter; and continual improvement in environmental performance. The policy should also state the Defendant's intent to provide adequate personnel and other resources for ECP.

(b) Organization, Personnel, and Oversight of ECP. The ECP Manual must 1) identify and define specific duties, roles, responsibilities, and authorities of key environmental staff in implementing and maintaining the ECP (e.g., could include position descriptions and/or performance standards for all environmental department personnel, and excerpts from others having specific environmental duties, and regulatory compliance responsibilities); 2) include organization charts that identify units, line management, and other individuals having environmental duties and regulatory compliance responsibilities; and 3) identify mechanisms of communicating environmental issues and information among the various levels and functions of the organization, to include all persons working for or on behalf of the Facility (e.g., on-site service providers, consultants, and contractors who function as *de facto* employees), and for receiving and addressing their concerns.

(c) Accountability and Responsibility. The ECP Manual must: 1) specify accountability and environmental responsibilities of the Facility's managers to include all managers working for or on behalf of the Facility; 2) address the required reporting to regulatory agencies for any non-compliance with Environmental Requirements; 3) identify corrective action procedures to be implemented in the event of non-compliance; 4) describe incentive programs for

the Facility's managers and employees to perform in accordance with the ECP and with Environmental Requirements; 5) describe potential consequences for departure from the ECP and/or non-compliance with the Environmental Requirements, including liability for criminal and/or civil/administrative penalties imposed as a result of non-compliance; and (6) post placards throughout the Facility which clearly state how to anonymously report a potential violation of the Environmental Requirements to the United States Probation Office, United States, and/or the ECP Auditor, including at a minimum the phone numbers for each.

(d) Environmental Requirements. The ECP Manual must: 1) describe a process for identifying potentially applicable Environmental Requirements; interpreting their applicability to specific operations, emissions, and waste streams; and effectively communicating those applicable Environmental Requirements to affected persons working for or on behalf of the Defendant; 2) describe a process for developing, implementing and maintaining ongoing internal compliance monitoring to ensure that Facility activities conform to applicable Environmental Requirements. This includes procedures for evaluating the operation and maintenance of all processes and equipment, including back-up and/or emergency systems. Compliance monitoring shall include inspections, calibration, and measurements, as appropriate; 3) describe procedures for prospectively identifying and obtaining information about changes and proposed changes in Environmental Requirements, and incorporating those changes into the ECP (i.e., regulatory "change management"); 4) describe a procedure for communicating with regulatory agencies regarding Environmental Requirements and regulatory compliance.

(e) Assessment, Prevention, and Control. The ECP Manual shall: 1) identify an ongoing process for assessing operations, for the purposes of preventing, controlling, or minimizing non-compliance with Environmental Requirements, including identification of

operations where equipment malfunctions, deterioration, operator errors, and/or deliberate malfeasance, are causing, or have the potential to cause: a) unplanned or unauthorized releases of hazardous or harmful contaminants to the environment, b) a threat to human health or the environment, or c) non-compliance with Environmental Requirements; 2) describe processes for identifying operations and activities where documented operating criteria, such as standard operating procedures (SOPs), are needed and/or need modification to prevent non-compliance, and defines a uniform process for developing or modifying, approving and implementing the documented operating criteria; 3) describe a system for conducting and documenting routine, objective, self-inspections by department supervisors and trained staff, especially at locations identified by the process described in this Paragraph; and 4) describe a “management of change” process to ensure identification and consideration of Environmental Requirements, the environmental aspects/impacts, potential operator errors or deliberate malfeasance during planning, design, and operation of ongoing, new, and/or changing buildings, processes, equipment, maintenance activities, and products.

(f) Environmental Incident and Non-compliance Investigations. The ECP Manual must: 1) describe standard procedures and requirements for internal and external reporting of environmental incidents and non-compliance with Environmental Requirements; 2) establish procedures for investigation that includes a process for root-cause analysis of identified problems to aid in developing the corrective actions, and prompt and appropriate correction of non-compliance; and 3) describe a system for development, tracking, and effectiveness verification of corrective and preventative actions.

10. Comprehensive Environmental Compliance Training Program (“CECTP”).

Based on the Initial Review and Evaluation results, the Consultant shall develop, implement, and

maintain a Comprehensive Environmental Compliance Training Program for the Facility addressing, at a minimum, the critical elements discussed below. The purpose of developing and implementing the CECTP is to assist the Defendant in achieving compliance with Environmental Requirements.

(a) Comprehensive Environmental Compliance Training Program Manual. Within **sixty (60) days** of completion of the Summary Report, the Defendant shall submit to the United States Probation Office and the United States for review and approval, a “Comprehensive Environmental Compliance Training Program Manual” which describes and documents the CECTP and contains an implementation schedule for each of the described training components not already fully implemented. The components of the CECTP can either be commercially available, developed in-house by Defendant with the Consultant, and/or a combination of in-house and commercially available training provided the training meets all of the requirements contained in this Attachment. The manual will also describe the process for how the Facility will document training provided to all employees and where such documents will be maintained.

(b) The United States Probation Office and the United States will notify the Defendant within **thirty (30) days** of obtaining the CECTP Manual from the Defendant whether the CECTP Manual is accepted. If the CECTP Manual is not accepted by the United States Probation Office and the United States, the United States Probation Office and/or the United States will inform the Defendant as to the reasons why the CECTP Manual is unacceptable, and the Defendant shall then have **thirty (30) days** to resubmit the CECTP Manual for acceptance.

(c) The CECTP Manual shall describe or contain, as appropriate, overarching policies, procedures, and programs that addresses the following critical elements: 1) The CECTP shall be based upon an Environmental Training Policy which clearly communicates the Facility’s

commitment to achieving compliance with Environmental Requirements, minimizing risks to the environment from unplanned or unauthorized releases of hazardous or harmful contaminants, and continual improvement in environmental performance; 2) the policy shall state the Facility's intent to provide adequate Organization, Personnel and Oversight for the CECTP, pursuant to requirements listed in Subparagraph b. of Paragraph 9; 3) the CECTP Manual shall enumerate Accountability and Responsibility, pursuant to Subparagraph c. of Paragraph 9; and 4) the CECTP Manual shall identify Environmental Training, Awareness, and Competence required for organization personnel or those acting on its behalf, as well as process for documenting training provided.

(d) CECTP training shall be designed to increase employee awareness and involvement in meeting the Defendant's ECP requirements. The training program shall, at a minimum, include: 1) program descriptions to ensure that the organization's employees or those acting on its behalf are aware of its environmental policies and procedures, Environmental Requirements, and their roles and responsibilities within the ECP; 2) program criteria for ensuring that personnel responsible for meeting and maintaining compliance with Environmental Requirements are competent on the basis of appropriate education, training, and/or experience; 3) program description of how training will be reinforced in the workplace in order to maintain increased employee awareness and involvement in meeting the Facility's Environmental Requirements; and 4) training on how to recognize operations and waste streams where equipment malfunctions and deterioration, and/or operator errors or deliberate malfeasance, that are causing, or have the potential to cause unplanned or unauthorized releases of hazardous or harmful contaminants to the environment, a threat to human health or the environment, or non-compliance with Environmental Requirements.

(e) Upon implementation of the CECTP, all current employees shall, within **sixty (60) days**, receive a minimum of eight (8) hours of classroom instruction. All employees hired after the implementation of the CECTP shall receive initial training of at least eight (8) hours of classroom instruction as part of the new employee orientation process or within **thirty (30) days** of hire. All employees shall receive an annual refresher training of at least four (4) hours classroom instruction.

(f) The subject material for the 8-hour classroom component of each training program shall be documented in the CECTP Manual and address, at a minimum, the following elements: 1) training objectives; 2) Defendant's Environmental, Safety, and Health Policy; 3) overview of pollution and potential environmental impacts of Facility's operations; 4) Environmental Requirements (statutory and regulatory overview); 5) hazards and the environment; 6) Facility-specific operations, waste generation and management, and Environmental Requirements; 7) emergency preparedness and response; 8) role of Environmental Department; 9) role of individual employees at Defendant's Facility (including potential consequences of departure from specified operating procedures, such as non-compliance and/or pollutant releases to the environment); 10) pollution prevention/recycling/waste minimization programs; and 11) community outreach activities.

(g) The subject material for the 4-hour refresher classroom component of each training program shall be documented in a training manual and address, at a minimum, the following elements: 1) training objectives; 2) Defendant's Environmental, Safety, and Health Policy; 3) new or revised Environmental Requirements; and 4) review of employee environmental responsibilities (including potential consequences of departure from specified operating procedures).

11. Environmental Planning and Organizational Decision-Making. The Facility will: 1) integrate environmental planning into organizational decision-making, including plans and decisions on capital improvements, product and process design, training programs, and maintenance activities; and 2) establish, on an annual basis, written targets, objectives, and action plans for improving environmental performance, by at least each operating organizational subunit with environmental responsibilities, as appropriate, including those for contractor operations conducted at the Facility, and how specified actions will be tracked and progress reported. Targets and objectives must include actions that reduce the risk of non-compliance with Environmental Requirements and minimize the potential for unplanned or unauthorized releases of hazardous or harmful contaminants.

12. Maintenance of Records and Documentation. The Facility will: 1) identify the types of records developed in support of the ECP (including audits and reviews), who maintains them and, where appropriate, security measures to prevent their unauthorized disclosure, and protocols for responding to inquiries and requests for release of information; 2) specify the data management systems for any internal waste tracking, environmental data, and hazardous waste determinations; and 3) specify document control procedures.

13. Pollution Prevention. The Facility will develop: 1) an internal process or procedure for preventing, reducing, recycling, reusing, and minimizing waste and emissions, including incentives to encourage material substitutions, as well as mechanisms for identifying candidate materials to be addressed by the pollution prevention program and tracking progress; and 2) a process and/or procedures to identify ways to specifically reduce benzene and particulate matter emissions, including installing maximum achievable control technologies and best management practices.

14. Continuing ECP Evaluation and Improvement. The Facility will develop: 1) the process to periodically (at least annually) evaluate the ECP. This shall include an evaluation of the effectiveness of the CECTP, incorporate the results of such evaluation into program improvements, ensure that the CECTP incorporates any modifications to the Environmental Requirements, and a process to communicate any modifications of the Environmental Requirements to affected Facility employees or those acting on its behalf in a timely manner to address any gaps in time prior to the next required training; and 2) a process to communicate the results of periodic evaluations of the ECP to Facility management personnel, including how instances of non-compliance with the ECP are addressed.

15. Public Involvement/Community Outreach. The Facility will develop a program for ongoing community education and involvement in the environmental aspects of the Facility's operations and general environmental awareness.

16. Subsequent to the United States' initial approval of the ECP Manual, the Defendant should revise and/or update the ECP Manual for the Facility on an annual basis. Substantial revisions or updates to the ECP Manual made by the Defendant before the ECP Audit required by Paragraph 26 below, shall be submitted to the United States and the ECP Auditor for review and approval. Upon approval by the United States, the changes shall be incorporated into the ECP Manual. A final copy of the ECP Manual shall be submitted to the United States Probation Office, United States, and the ECP Auditor. The ECP Manual as approved pursuant to this Paragraph shall be used during the ECP Audit as further described in Paragraphs 19 to 29, below.

17. Upon the Defendant's receipt of United States Probation Office and United States' approval of the ECP Manual and CECTP, the Defendant shall commence implementation of the ECP and CECTP within **thirty (30) days** of receipt of said approvals, respectively. The

Defendant shall submit implementation status reports, to be signed by the highest level corporate officer with the ability to bind the company, to the United States Probation Office and to the United States on a biannual basis beginning not earlier than **sixty (60) days** from receipt of approval of the ECP Manual and CECTP, respectively. The status reports shall be due on the 15th day of the reporting month and **every six (6) months** thereafter until the end of probation.

18. As part of the implementation status reports, Defendant shall submit the results of the periodic ECP evaluations, including a copy of any modifications to the ECP Manual and CECTP, as applicable, to the United States Probation Office and the United States as part of the implementation status report. The implementation status reports shall also include copies of any documentation memorializing the CECTP training taken by Defendant's employees or those acting on its behalf.

D. ECP Audit

19. Within **sixty (60) days** of United States Probation Office and the United States' approval of the ECP Manual, the Defendant shall provide the United States Probation Office and the United States, in writing, a notification of the selection of an independent Proposed ECP Auditor who (a) was not involved in the Initial Review and Evaluation, (b) meets the qualification requirements of ISO 19011 (First edition, 2002-10-01); (c) has expertise and competence in the regulatory programs under federal and state environmental laws; and (d) has at least a bachelor's degree from an accredited institution. In addition, the Proposed ECP Auditor must be capable of exercising independent judgment and discipline in performing an ECP Audit at the Facility, as described in Paragraph 26 below. The ECP Auditor must have no direct financial stake in the outcome of the ECP Audit conducted pursuant to this Attachment. If the Defendant has or has had any other contractual or financial relationship with the Proposed ECP Auditor, the Defendant

shall disclose to the United States Probation Office and United States such past or existing contractual or financial relationships when the Proposed ECP Auditor is identified.

20. The United States Probation Office and the United States EPA shall notify the Defendant within **thirty (30) days** of obtaining written notification from the Defendant whether the Proposed ECP Auditor meets the qualifications set forth in the previous Paragraph. If any Proposed ECP Auditor is determined to not meet the qualifications set forth in the previous paragraph, or that past or existing relationships with the Proposed ECP Auditor would affect the ECP Auditor's ability to exercise the independent judgment and discipline required to conduct the ECP Audit, the Defendant shall identify a different Proposed ECP Auditor within **thirty (30) days** of the Defendant's receipt of the United States' determination. Both the Defendant's initial proposal and the United States Probation Office and the United States' review of any different Proposed ECP Auditor shall be governed by Paragraphs 19 and 20 of this Attachment Decree until such time as the United States Probation Office and the United States notifies the Defendant that the Proposed ECP Auditor is qualified.

21. Defendant shall contract with the ECP Auditor within **fifteen (15) days** of the United States Probation Office and the United States approval of the ECP Auditor to serve as the ECP Auditor to review and monitor Defendant's implementation of the ECP and conduct ECP Audits at the Facility.

22. As part of the ECP Auditor responsibilities, the ECP Auditor shall, without prior notice, audit Defendant's plant at least four (4) times during the first, second, and third years of Defendant's probation, and at least two (2) times during the subsequent years of Defendant's probation. The ECP Auditor shall have the authority to fully search Defendant's Facility, review records, and take any measurements or samples it deems appropriate. Following each audit

and/or analysis the ECP Auditor conducts, it shall prepare a report documenting the Defendant's adherence to the ECP and identifying any alleged violations of local, state, or federal laws or regulations. A copy of the report prepared by the ECP Auditor shall be submitted to the United States Probation Office, the United States, EPA, and New York State.

23. The Defendant shall identify any and all site-specific safety and training requirements for the ECP Auditor, and shall ensure that the requirements are met prior to conducting the audit.

24. The ECP Auditor will prepare a draft ECP Audit Plan and provide it to the Defendant and the United States for review and comment. The audit criteria shall include the provisions set forth the ECP Manual approved pursuant to Paragraph 9 of this Attachment, and any other ECP standards or criteria deemed appropriate by the Defendant or the United States. The ECP Audit Plan shall provide for an evaluation of the adequacy of ECP implementation relative to the audit criteria, from top management down, throughout each major organizational unit at the Facility, and to identify areas of concern. The draft ECP Audit Plan shall be submitted within **two (2) months** after the ECP Auditor has been retained.

25. Within **thirty (30) days** of receipt of United States' comments, the Defendant shall direct the ECP Auditor to develop a final audit plan that incorporates the United States' comments which shall be followed during conduct of any ECP Audit performed pursuant to this Attachment. The Defendant shall direct the ECP Auditor to concurrently submit the final ECP Audit Plan to the United States Probation Office, the United States, EPA, New York State, and the Defendant upon completion. The initial audit shall be conducted within **ninety (90) days** of submission of the final ECP audit plan.

26. Each ECP Audit shall be conducted in accordance with ISO 19011 (First edition,

2002-10-01). The ECP Auditor shall assess conformance with the criteria specified in Paragraph 24 above, and shall determine the following: 1) whether there is a defined system, subsystem, program, or planned task for the respective ECP element; 2) to what extent the system, subsystem, program, or task has been implemented, and is being maintained; 3) the adequacy of each operation's internal self-assessment procedures for programs and tasks composing the ECP; 4) whether the Defendant is effectively communicating Environmental Requirements to affected parts of the organization, or those working on behalf of the organization; 5) whether further improvements should be made to the ECP to better conform to the audit criteria; 6) whether there are observed deviations from the Defendant's written requirements or procedures; and 7) whether continual improvement is occurring.

27. Designated representatives from the United States Probation Office, and other environmental regulatory agencies at the request of the United States Probation Office, may participate in the ECP audit as observers, but may not interfere with the independent judgment of the ECP Auditor.

28. ECP Audit Report. The ECP Auditor shall develop and concurrently submit an ECP Audit Report to the United States Probation Office, the United States, EPA, New York State, and Defendant for each ECP Audit as required by this Attachment within **sixty (60) days** following the completion of the on-site portion of the audit. The ECP Audit Report shall present the Audit Findings and shall contain the following information: 1) audit scope, including the period of time covered by the audit; 2) the date(s) the on-site portion of the audit was conducted; 3) identification of audit team members; 4) identification of the Defendant representatives, and United States Probation Office and regulatory agency personnel observing the audit; 5) the distribution for the ECP Audit Report; 6) a summary of the audit process, including any obstacles

encountered; 7) detailed Audit Findings, including the basis for each finding and each area of concern identified; 8) identification of any Audit Findings corrected or areas of concern addressed during the audit, and a description of the corrective measures and when they were implemented; and 9) certification by the ECP Auditor that the ECP Audit was conducted in accordance with the provisions of this Attachment.

29. If the ECP Auditor requires additional time to analyze available information or to gather additional information to prepare and submit the Audit Report, it will notify the United States Probation Office, the United States, EPA, and New York State when it will be available. The United States Probation Office will notify the Defendant when the report will be available.

E. Follow-Up Corrective Measures

30. Audit Response and Action Plan. Upon receiving the Audit Report, the Defendant shall review and evaluate the Audit Findings and any need for conducting a root cause analysis of the identified Audit Findings, and shall investigate all areas of concern. Within **sixty (60) days** of receiving the Audit Report for the Facility, the Defendant shall develop and submit to the United States Probation Office, the United States, EPA, and New York State for review and comment a response to the ECP Audit Report, (the "Audit Response and Action Plan"). The Audit Response and Action Plan shall provide a response to the findings and areas of concern identified in the ECP Audit Report and provide an action plan for expeditiously bringing the Facility into full conformance with the ECP provisions in Paragraph 9 of this Attachment and the ECP Manual, and fully addressing all areas of concern. The Audit Response and Action Plan shall include the result of any root cause analysis, specific deliverables, responsibility assignments, and an implementation schedule for the identified actions and measures, including those that may have already been completed.

31. Final Audit Response and Action Plan - The United States Probation Office will provide comments on the Audit Response and Action Plan and the Defendant shall, within **thirty (30) days** of receipt of the comments on the Audit Response and Action Plan, submit to the United States Probation Office, the United States, EPA, and New York State a Final Audit Response and Action Plan.

32. After making any necessary modifications to the Audit Response and Action Plan based on the comments provided by the United States Probation Office, if any, the Defendant shall implement the Audit Response and Action Plan in accordance with the schedules set forth therein.

33. Certification of ECP Implementation

(a) Within **ten (10) days** after completion of an ECP Audit in which no instances of nonconformance with the ECP Standard were found at the respective audited Facility, the Defendant shall submit a Request for Certification of ECP Implementation to the ECP Auditor. Within **ten (10) days** after the receiving the certification request, the ECP Auditor shall submit to the United States Probation Office, the United States, EPA, New York State, and Defendant a Certification of ECP Implementation for the respective Facility, indicating that the ECP is fully implemented and conforms to the ECP Standard.

(b) Alternately, within **ten (10) days** after completion of actions or measures identified in the Final Audit Response and Action Plan, the Defendant shall submit to the ECP Auditor a Request for Certification of ECP Implementation.

(c) As soon as practicable, but in no event later than **thirty (30) days** after it has received the certification request pursuant to Subparagraph b. of this Paragraph, the ECP Auditor shall, as necessary, re-inspect the respective Facility (i.e., conduct a "Certification Review") and submit to the United States Probation Office, the United States, EPA, New York State, and

Defendant a written statement identifying those Audit Findings which have been addressed and any which have not, including an explanation describing the failure to address or correct, as appropriate, any Audit Findings. The Defendant shall address any outstanding Audit Findings identified during the Certification Review within **thirty (30) days** after receiving the abovementioned written statement.

(d) When the ECP Auditor concludes that all Audit Findings have been addressed at the respective Facility, it shall submit to the United States Probation Office, the United States, EPA, New York State, and Defendant a Certification of ECP Implementation for the respective Facility, indicating that the ECP is fully implemented and conforms to the ECP Standard.